

Atty. Dkt. No. 062834-0170

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1, 7, and 13 are currently being amended. These amendments relate only to correcting section 112 objections and rejections, do not require any additional searching and remove issues for appeal. The first amendment is to remove the language "with the goods not being sold on the network" and to replace that language with language that clarifies that the goods are sold -- manually at store locations --. Note that the application is replete with basis for this amendment, since the example embodiment in the application is for franchise restaurants. The examiner has also raised a question on the meaning of the words "making accessible" in element g. A second amendment clarifies that this accessibility is electronic accessibility, such as for example, access to a web site containing the data, or an electronic transmission of the data. It is respectfully requested that these amendments be entered in order to remove an issue from appeal.

After amending the claims as set forth above, claims 1-3, 6-9, 12-15 and 18 are now pending in this application. Note that the word "set" is included in the claims. "Set" is intended to mean one or more.

The independent claims cover a comprehensive supply chain management system for dealing with periodic sales data being received from a plurality of independent point of sale outlets in a franchise context and detecting the problems that may be indicated by that data. A fundamental management problem faced by a franchise supply chain management system is to quickly determine from point of sale data where there are problems, either relating to accuracy of sales data reported from the outlets that may impact forecasting used in ordering products from suppliers or distributors, or problems relating to the outlets not following

Atty. Dkt. No. 062834-0170

franchise requirements for goods that may impact the actual cost of the goods being sold by the outlet (for example, in a restaurant point of sale context, the outlet not properly following a recipe for a hamburger and assembling it with three pickles instead of the two pickles called for by the franchise recipe thereby increasing the actual cost of the good sold, as well as the projected rate of ingredient usage), or problems faced because the point of sale data indicates a major discrepancy relative to a forecasted sales amount that will typically entail immediate ordering or canceling of product orders from distributors and suppliers.

Claims 1-18 were rejected under 35 USC 103 as being obvious over the three-reference combination of Shavit et al. in view of Hafner and further in view of Park and further in view of Examiner Notice. This rejection is respectfully traversed and reconsideration is requested.

Shavit discloses a system for facilitating the direct communication between independent buyers and sellers, and also facilitates the provision of payment services and freight services between such independent entities. No point of sale data is received in Shavit for sales made manually at store locations, which is the limitation of the present claims. Shavit operates as an order entry service for sales generated on the network. See Shavit at column 6, lines 19-39, which reads as follows

Subscribing distributors, for example, can provide their customers with more convenient and more efficient ways to purchase goods and enjoy improved operations when utilizing the interactive market management system 50. In providing on-line, interactive electronic access to multiple sources as well as to freight, financial, and other related services, the interactive market management system 50 optimizes the procurement process, cuts costly inventories at each level of the distribution chain and provides controlled access to valuable operational and commercial information. Access to distributors is provided by a menu of optional services which may range from a simple mailbox service used to collect customer orders to a complete automated wholesale distributor management system that includes such functions as order entry, inventory control, sales and management reports and

Atty. Dkt. No. 062834-0170

financial subsystems. Thus, a distributor may offer its customers an interactive, convenient and consistent way to place orders or conduct any other business with the distributor. (Emphasis added.)

As the examiner correctly notes, almost all of the elements of applicants' claims are missing from Shavit. As the examiner states at page 3 of his office action,

"Shavit et al. lacks the specific teaching of the data comprising amount of goods sold which sales are not generated on the network; checking/identifying the data for errors; correcting the data; transmitting the log of error(s) to the outlets; calculating actual and ideal good costs; and tacking data against forecasted sales."

The examiner cites Hafner et al. (5,893,076) for receiving point of sale data for inventory control and forecasting. See column 4, lines 1-3 of Hafner et al. The examiner states at page 3 of his office action that "it would have been obvious to one of ordinary skill in the art to modify Shavit et al. to have the data include amount of goods sold which sales are not generated on the network and to track data against forecasted sales, in view of Hafner et al. in order for supplier's to manage their retailer's inventory with a minimal amount of human intervention." Such a modification of Shavit is not obvious to one of ordinary skill because Shavit is directed to one-to-one transactions on a network.

However, even if it could be argued that one of ordinary skill would find it obvious to modify Shavit in accordance with the teaching of Hafner et al. (which it is not), there is nothing in Hafner et al. that meets the claim language

"c) identifying the errors made by the independent point of sale outlets such as point of sale set-up error, point of sale entry error, back office error, polling error, and datum item mapping error and logging the errors in a log;

d) correcting the data using the identification;

e) transmitting the log to the independent point of sale outlets utilizing the network."

Likewise, there is nothing in Hafner et al. meeting the claim language

Atty. Dkt. No. 062834-0170

"g) calculating in a management supply chain computer an actual good cost per point of sale outlet and an ideal good cost and making electronically accessible to the respective independent point of sale outlets."

As noted, Hafner et al. relates to forecasting the sales of goods, not to the claimed step of "calculating ... an actual good cost and an ideal good cost and making them electronically accessible." Additionally, Hafner is focused on the supplier generating orders based on forecasting from current POS data. It does not take that current POS data and look back at the forecast for the time frame in which the manual sales reflected by the POS were made and make a comparison and generate an alert. Thus, Hafner does not disclose or suggest the tracking and generating an alert steps.

Park is cited to make up the deficiencies of Shavit relating to identifying and correcting errors. Park discloses an accounting processor for automatically performing an accounting procedure for transaction data on a real-time basis. In this procedure there is a journalizing step for classifying the information into credit side and debit side information, summing the classified transaction information, and generating an error message on a display if the sum of the debit/credit side transaction amount is not in accordance with balancing principles. See Park at column 13, lines 12-28, which reads as follows:

"The journalizing step comprises the steps of: classifying the generated predetermined standard management information comprised of the accounts information, debit/credit position information and transaction amount into a debit side and a credit side and summing the classified transaction data; normally processing the transaction data by displaying the journalizing result on the display/input unit if the sum of the debit/credit side transaction amount does not agree with balancing principles, storing the transaction data in the accounting ledger storage portion, and temporarily storing the to-be-balancing-operated transaction data; and error-processing the transaction data by displaying an error message on the display/input unit if the sum of the debit/credit side transaction amount is not accordant to balancing principles.

Atty. Dkt. No. 062834-0170

and deleting the corresponding error data input from the display/input unit or correcting the corresponding error item.” (Emphasis added.)

There is no motivation to modify the Shavit system to incorporate the credit/debit journalizing step of Park. This disclosure from Park relates to a simple balancing of the credit side to the debit side of the transaction and generating a message called an error message if it does not. It has nothing to do with the claimed “errors made by the independent point of sale outlets,” such as the claimed “point of sale set-up error, point of sale entry error, back office error, polling error, and datum item mapping error and logging the errors.” Likewise, there is no “logging the errors in a log,” or the claimed “transmitting the log to the independent point of sale outlets utilizing the network.” The Park disclosure relates to systematizing transactions across an entire enterprise. See column 1, lines 6-29. The Park data from the outlets that is used to make the credit and debit calculations is not erroneous. It does not reflect an error made by the outlet.

Likewise, Park does not disclose the problems relating to detecting discrepancies between the actual cost of goods sold by the point of sale outlet and the ideal cost of goods that should be realized by following franchise rules, such as following a particular recipe on the number of pickles to use in the assembly of a hamburger. The claim language covering this more comprehensive aspect is “receiving amounts of products distributed to the respective independent point of sale outlets; calculating in a management supply chain computer an actual good cost per point of sale outlet and an ideal good cost and making electronically accessible to the respective independent point of sale outlets.”

Likewise, Park does not recognize the problem faced when point of sale data indicates a major discrepancy relative to a forecasted sales amount that may entail immediate canceling of product orders from distributors and suppliers, or attempt to detect such a discrepancy. The claim language on this point is as follows: “tracking the data relating to the sale of goods against forecasted sales on a periodic basis; and generating an alert if a deviation between the data and the forecasted sales exceeds a threshold.”

Atty. Dkt. No. 062834-0170

The examiner concludes with statements of obviousness with no basis in the record, thus failing to make a prima facie case. Specifically, the examiner states as follows:

“Further, the transmission of a log of the error(s) to a manager and to the outlets would be an obvious design choice to one of ordinary skill in the art that is well known in the industry in order for the manager and the outlets to determine the reliability of the transaction system and the accounting system.

Still further, it is well known for businesses, particularly franchises, to calculate ideal goods costs and actual costs of goods to determine if goods have been stolen or wasted.”

It is assumed that the Examiner is taking official notice of the above statements. In accordance with MPEP 2144.03, applicants traverse/challenge these official notice statements based on personal knowledge and request that each point of official notice be supported by a citation to a reference, as set forth by the MPEP Office requirements, and that a suggestion in the prior art be pointed out for a motivation to combine each of these Noticed elements to realize the claimed combination. In view of the fact that this is a three reference combination supplemented by resort to Official Notice for some of the elements, such proof is essential to nullify the potential that applicants' specification is being used as a blueprint for such a combination. This traverse of the official notice is made insofar as these statements of official notice are applied to the claims as amended.

Additionally, applicants wish to point out that the claimed system deals with “independent point of sale outlets of a supply chain” and provides a comprehensive solution to the problem of managing point of sale data coming in from these diverse independent entities. Shavit et al. teaches one-to-one communications for independent users, but not in a supply chain context. There is no reason for the system of Shavit to focus on errors in POS data because it does not receive data on sales made manually at store locations. All of the Shavit transactions are already correct because they were made through the Shavit online system. There is no subsequent data keying of previously completed sales that were made manually at store locations where errors could arise. Likewise, Shavit presents a

Atty. Dkt. No. 062834-0170

communication interface so that independent buyers and sellers can do business online. Shavit has no reason to calculate an ideal good cost and an actual good cost, nor does it have the data to make such calculations. As noted previously, a discrepancy between the ideal good cost and the actual good cost would indicate a failure to follow a recipe for the good, or theft, or some other problem at the outlet. Shavit has no reason to make such calculations or to acquire the data necessary to make such calculations, absent using applicants' claims as a blueprint. Likewise, Hafner teaches nothing about calculating an ideal good cost and an actual good cost. Also, Hafner is focused on the supplier generating orders based on forecasting from current POS data. It does not take that current POS data and look at what was forecast for that period in which the manual sales were made for the POS data and make a comparison and generate an alert. There is no concern in Hafner for a need to cancel an order based on an alert due to a significant over-ordering. Park teaches only credit/debit balancing, which has nothing to do with errors made by a point of sale outlet, the logging of those errors or the transmission of such a log to the point of sale outlets.

Applicant believes that the present application is now in condition for allowance. The references, whether alone or combined, are deficient in that they do not disclose individually or collectively the diverse elements of the comprehensive supply chain system claimed herein for managing POS data not generated by or on the supply chain network. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Atty. Dkt. No. 062834-0170

Respectfully submitted,

Date 2/10/05

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874